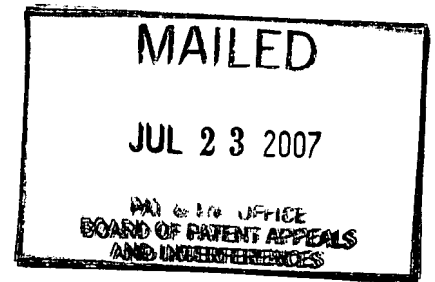


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH THOMPSON
AND DEBRA TAK

Application No. 10/634,328



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on July 12, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

An Information Disclosure Statement (IDS) was filed on August 4, 2003. A review of the Image File Wrapper reveals that the examiner has not considered the IDS. According to MPEP § 609 which states:

“ . . . The Examiner must also fill in his or her name and the date the information was considered in blocks at the bottom of the PTO-1449 or PTO/SB/08A and 08B form.”

On November 8, 2005, appellants filed an Appeal Brief under 37 CFR § 41.37. A review of the file reveals that the appellants include claim 17 as an independent claim under the heading "Summary of Claimed Subject Matter." However, claim 17 has been cancelled according to an amendment filed on December 15, 2003. A clarification is needed to clarify whether or not claim 17 has been cancelled.

In addition, On March 13, 2006, Examiner's Answer was entered into the record. In the Evidence Relied Upon section, page 2, paragraph 8, the examiner has stated that "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that references to Hebbeck and Carides et al. were applied to the statement of rejections in the Grounds of Rejection, paragraph (9) of the examiner's answer.

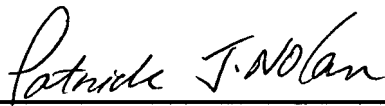
Before further review, the examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of references mentioned in the statement of rejections. See the Manual of Patent Examining Procedure

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) for consideration of the IDS;
- 2) hold the Appeal Brief of November 8, 2005, defective;
- 3) notify applicants to file a paper providing a summary of the claimed subject matter with a clarification of claim 17;
- 4) issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, paragraph (8); and
- 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
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Application No. 10/634,328

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